

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

ROLAND JESSE DAZA-CORTEZ, and
RAFAEL VALADEZ-VAZQUEZ,
Defendants.

NO. CR15-269RAJ

ORDER GRANTING MOTION TO
CONTINUE TRIAL AND PRETRIAL
MOTIONS DEADLINE

THE COURT having considered the motion to continue trial and pretrial motions deadline filed by defendant Daza-Cortez in this matter, as well as the record and files herein, including Defendants' written waivers of speedy trial, hereby makes the following findings:

1. On August 6, 2015, Mr. Daza-Cortez was indicted on drug, firearm, and money laundering charges. (Dkt. No. 1). Mr. Daza-Cortez was arraigned on these charges on August 12, 2015. A superseding indictment was filed on January 7, 2016, that added money laundering charges and requested forfeiture of substantial assets. (Dkt. No. 47). In the past year, Mr. Daza-Cortez has had four different attorneys. On June 21,

1 2016, this Court granted Mr. Daza-Cortez's motion to substitute counsel by Emily M.
2 Gause. (Dkt. No. 90).

3 2. Since June, Mr. Daza-Cortez's attorney has obtained over 8000 pages of
4 discovery, hours of surveillance video and wiretapped phone calls, and hundreds of pages
5 of spreadsheets continuing financial discovery allegedly connected to the money
6 laundering charges. Since July 2016, the government has produced over 1,500 pages of
7 discovery.

8 3. Within a month of substituting into the case, Mr. Daza-Cortez's new
9 attorney hired a forensic accountant, Lorraine Barrick, to investigate the money
10 laundering allegations and author a report to be used in negotiation and pretrial motions.
11 Ms. Barrick reviewed the discovery index at that time and estimated that her analysis
12 would require at least three months to complete. (Dkt. No. 92, Exhibit 1). In early
13 August, Mr. Daza-Cortez also hired a private investigator to assist in expediting the
14 defense investigation. None of Mr. Daza-Cortez's prior attorneys had employed an
15 investigator or defense accountant to assist in his defense.

16 4. On August 8, 2016, about a month after receiving discovery in Mr. Daza-
17 Cortez's case, Mr. Daza-Cortez's current counsel filed a motion to continue the October
18 3 trial date. (Dkt. No. 92). Pretrial motions, at that point, were due August 18, 2016.
19 The Court granted the stipulated motion to continue on August 16 (Dkt. No. 95) setting a
20 new trial date of January 23, 2017 with a pretrial motion deadline of December 8, 2016.

21 5. Since the last motion to continue was filed, the government provided
22 discovery on August 16, August 26, September 7, October 13, October 17, October 28,
November 4, November 8, and most recently on November 21. The government's
investigation appears ongoing, although not necessarily caused by any intentional delay
by the government or agents. This is an extremely complex case.

6. On September 22, 2016, Mr. Daza-Cortez's attorney began a seven-week
murder trial in Pierce County in *State of Washington v. William Alvarez-Calo*, cause

1 number 13-1-02553-3. This trial was originally expected to only last three to four weeks.
2 This trial substantially limited Mr. Daza-Cortez's attorney from being able to review
3 discovery as efficiently as first anticipated and somewhat stalled Mr. Daza-Cortez's
4 defense team's investigation. Despite being in trial for seven weeks, Mr. Daza-Cortez's
5 attorney still met with Mr. Daza-Cortez bi-weekly (on Fridays), reviewed his discovery
6 on weekends, and worked with the defense team to continue developing strategy.

7 7. In early October, Mr. Daza-Cortez's defense team requested a discovery
8 conference to examine the dozens of exhibits seized during execution of various search
9 warrants. This occurred on October 28 at the Seattle DEA. Of importance were three
10 large boxes filled with financial documents seized from Mr. Daza-Cortez's house. These
11 documents were all assumed to have already been provided in discovery as bates stamped
12 1497-6380. However, while examining the documents, Ms. Barrick noted that there were
13 many documents she had not ever seen, despite a thorough review of the bates stamped
14 discovery. There is still a discovery discrepancy that the parties are trying to resolve
15 without the Court's involvement.

16 8. Additionally, the government previously provided volumes of financial
17 documents in the form of spreadsheets and raw data from bank records to prior counsel in
18 February 2016. However, the government also made it clear that the financial records
19 produced in discovery were not the entirety of what the government possessed.
20 Therefore, the defense team spent time at the U.S. Attorney's office reviewing the other
21 documents. It became clear that the records were so voluminous that defense requested a
22 complete copy of the remaining records not already produced in discovery. These
records are more than twice the size of the initial disclosures.

23 9. Also, while together at the discovery conference, the parties discovered that
24 the 2007 Scion where the bulk of the drugs, guns, and money was found was not retained
25 by the seizing agency. Defense is investigating this failure to preserve evidence and will
26 likely file motions regarding this after such investigation.

1 10. Most importantly, Mr. Daza-Cortez's defense attorney has not reviewed all
2 the discovery. New discovery is ongoing, but defense counsel has not even been able to
3 review the entirety of the initial 7000 pages provided when she first became counsel of
4 record. Further, defense counsel has not listened to all of the phone calls, viewed all of
5 the surveillance footage, or read all of the transcripts allegedly involving her client. This
6 review of discovery is ongoing and will take many hours. Additionally, while a defense
7 investigation is underway with many hours put into gathering additional evidence not
8 provided in discovery, that investigation is not close to completion. Defense counsel
needs to interview key witnesses, both prosecution witnesses but also witnesses that have
not been endorsed by the government.

9 11. Mr. Daza-Cortez's forensic accountant has invested many hours into this
10 case, but is still not completely finished with review of the discovery. Initial
11 investigations and discovery seemed to indicate that the government may be pursuing
12 additional forfeitures and money laundering allegations that the defense team had an
13 obligation to investigate. However, after the discovery conference one month ago, it
14 became clear that the defense could limit our scope of financial investigation
15 significantly. Even so, interviews with key financial witnesses are necessary to complete
Ms. Barrick's report and have not yet occurred. She has not begun a draft report yet.

16 Based on these facts, as well as the complete history and record of this case as
stated in the record and known to the Court,

17 The COURT HEREBY FINDS AS FOLLOWS:

18 12. The ends of justice served by granting this continuance outweigh the best
19 interests of the public and the defendants in a speedy trial. 18 U.S.C. § 3161(h)(7)(A);
20 18 U.S.C. § 3161(h)(7)(B)(i), (iv).

21 13. The Court has considered the Defendants' speedy trial rights and conducted
22 a balancing test between the four factors outlined in Barker v. Wingo, 407 U.S. 514, 92 S.

1 Ct. 2182, 33 L. Ed. 2d 101 (1972): (1) the length of the delay, (2) the reason for the
2 delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant.

3 14. The failure to grant Mr. Daza-Cortez a short continuance would prejudice
4 his constitutional right to have effective assistance of attorney, one who has thoroughly
5 reviewed all of the discovery, engaged in pretrial investigation and witness interviews,
6 and explored options for accepting a plea resolution. This prejudice to the Defendant is
7 far greater if the request for continuance is denied, whereas the Court has been presented
8 with no facts suggesting a prejudice to either of the Defendants from the requested,
9 reasonably short delay.

10 15. For these reasons, a continuance is necessary to allow Mr. Daza-Cortez
11 the reasonable time for effective preparation, taking into account the exercise of due
12 diligence, and in the interests of justice. U.S.C. § 3161(h)(7)(B)(i), (iv). Further, the ends
13 of justice served by a continuance outweigh the best interests of the public and both of
14 the defendants in a speedy trial.

15 16. Mr. Valadez-Vasquez, who is not detained pending trial, is joined for trial
16 with Mr. Daza-Cortez and has not sought a severance. The delay requested here of less
17 than 60 days is reasonable under the circumstances as to both Defendants.

18 17. Both Mr. Daza-Cortez and Mr. Valadez-Vasquez have executed a speedy
19 trial waiver and filed it separately with the Court for consideration. Mr. Daza-Cortez and
20 co-defendant Mr. Valadez-Vazquez have requested that the court find, for the purpose of
21 computing time limitations imposed by the speedy trial act, that the period of delay from
22 the date this motion is filed to the new trial date as set by this Court, is excludable time
pursuant to 18 U.S.C. § 3161(h)(7)(A) and U.S.C. § 3161 (h)(7)(B)(i), (iv).

18 18. The Court agrees that to perform effectively, and to avoid a miscarriage of
19 justice, the defense needs adequate time to review the evidence, allow a forensic expert to
20 investigate, and consult before the pretrial motions deadline. The Court further agrees
21 that the current schedule provides insufficient time to insure effective motions and trial
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1 preparation, taking into account due diligence, within the meaning of 18 U.S.C.
2 §§ 3161(h)(7)(B)(i) and 3161(h)(7)(B)(iv).

3 19. Under these circumstances, the Court finds that a failure to grant the
4 continuance would deny counsel the reasonable time necessary for effective preparation,
5 taking into account due diligence, within the meaning of 18 U.S.C. § 3161(h)(7)(A).

6 20. The Court further finds that the ends of justice will be served by ordering a
7 continuance in this case, that a continuance is necessary to insure effective trial
8 preparation and that these factors outweigh the best interests of the public in a more
9 speedy trial, within the meaning of 18 U.S.C. § 3161(h)(7)(A).

10 IT IS THEREFORE ORDERED that the defendant's motion (Dkt. #99) is
11 GRANTED. The trial date in this matter is continued to **March 20, 2017**. All pretrial
12 motions, including motions in limine, shall be filed no later than **February 6, 2017**.

13 IT IS FURTHER ORDERED that the time period between the date of this order
14 and the new trial date of March 20, 2017, is a reasonable delay and is excludable time as
15 to both Defendants, pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(6).

16 DATED this 9th day of December, 2016.

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The Honorable Richard A. Jones
United States District Judge